

**FILED**

**MAR 05 2004**

**Commission on  
Judicial Performance**

**STATE OF CALIFORNIA  
COMMISSION ON JUDICIAL PERFORMANCE**

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**INQUIRY CONCERNING  
JUDGE WILLIAM R. DANSER  
No. 172**

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**ANSWER OF JUDGE WILLIAM R. DANSER  
TO AMENDED NOTICE OF FORMAL PROCEEDINGS**

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WILLIAM R. DANSER**

COMES NOW William R. Danser, a judge of the Santa Clara County Superior Court (hereafter "Judge Danser") and answers the First Amended Notice of Formal Proceedings as follows:

**PRELIMINARY STATEMENT**

On May, 28, 2003, Staff Counsel for the Commission on Judicial Performance (hereafter "Commission Counsel" or "Commission") released information to both the California Attorney General and the Santa Clara County District Attorney's Office (hereafter "District Attorney") regarding the Commission's investigation into Judge Danser's alleged misconduct on the bench pursuant to Commission Rule 102(g). The District Attorney thereafter requested and obtained additional information from the Commission Counsel regarding its investigation. To date, Judge Danser is unaware of the number of communications between the District Attorney and Commission Counsel, but is aware that any information received by either entity is provided almost immediately to the other.

Despite the passage of almost two-months' time since the institution of the investigation, Commission Counsel advised Judge Danser, via written correspondence dated July 24, 2003, that the Commission had ordered a preliminary investigation of the alleged misconduct. The Commission ordered Judge Danser to respond to the 15-page allegations no later than August 13, 2003. Via written request dated August 11, 2003, Judge Danser received an extension of time to respond to July 24, 2003, preliminary investigation letter.

On August 21, 2003, Commission Counsel advised Judge Danser of further additional charges. Before Judge Danser's response to the either of the preliminary investigation letters was due, Judge Danser was indicted in

Santa Clara County Superior Court on September 16, 2003, based on the results of the investigation released by the Commission to the District Attorney. In fact, Commission Counsel Richard Horn and Brad Battson testified as witnesses before the Grand Jury in connection with the September 16, 2003, indictment.

On September 25, 2003, and again on November 4, 2003, Judge Danser advised Commission Counsel, via his former attorney Edward P. George, Jr., that, given the parallel criminal indictment, Judge Danser needed to invoke his Fifth Amendment privilege against compelled self-incrimination as to the preliminary investigation letters of July 24 and August 21, 2003, and could not otherwise respond thereto. Mr. George further advised Commission Counsel that providing any response may be deemed a waiver of these rights while the indictment is pending.

Thereafter, Commission Counsel advised Judge Danser of even further additional charges the Commission had received from the District Attorney. On December 23, 2003, Judge Danser, via Mr. George, again advised Commission Counsel that Judge Danser was invoking his Fifth Amendment privilege against self-incrimination with respect to any of the allegations set forth in the Commission's preliminary investigation letters of July 24, 2003, August 21, 2003, and December 12, 2003, during the pending Indictment. Mr. George further advised Commission Counsel that Judge Danser's trial date was March 29, 2004.

On or about February 3, 2004, the Commission served its Notice of Formal Proceedings on Judge Danser. James A. Murphy, new counsel for Judge Danser, acknowledged receipt thereof on February 4, 2004. On February 6, 2004, the Commission served its First Amended Notice of

Formal Proceedings, which included additional "counts" of alleged misconduct. Despite the pending Indictment, the Commission has refused to delay its proceedings pending conclusion of the March 29, 2004, criminal trial.

Given the Commission's refusal to cooperate in the protection of Judge Danser's Fifth Amendment rights, Judge Danser thereafter filed a Petition for Writ with the California Supreme Court, requesting their assistance in staying the Commission proceedings pending the conclusion of the criminal trial. The California Supreme Court, however, summarily denied Judge Danser's request via Order dated March 3, 2004.

As a result, Judge Danser has no recourse to protect against the self-incrimination otherwise compelled by the Commission pending the criminal indictment except to, again, assert his Fifth Amendment privilege in this Answer. Judge Danser, however, fully understands and appreciates his duty to cooperate with the Commission pursuant to Commission Rule 104 and, therefore, reserves his right to respond to the preliminary investigation letters and answer the First Amended Notice of Formal Proceedings pursuant to Commission Rule 119(c) following the conclusion of the March 29, 2004, criminal proceedings.

#### **COUNT ONE**

Regarding the allegations set forth in Count One of the First Amendment Notice of Formal Proceedings, Judge Danser hereby invokes his Fifth Amendment privilege against self-incrimination guaranteed by the United States Constitution as to all allegations. Judge Danser is informed and believes that otherwise admitting or denying the allegations set forth in Count One, pursuant to Commission Rule 119(c), will cause irreparable

injury to Judge Danser in his criminal case, as the District Attorney would utilize the admissions/denials as evidence against him therein. The Fifth Amendment privilege against self-incrimination applies to all proceedings, whether they be civil, criminal, administrative, judicial or investigatory. *Maness v. Meyers*, 419 U.S. 449, 464; 95 S.Ct. 584; 42 L.Ed. 2d 574 (1975); *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686, 688; 208 Cal. Rptr. 743 (1984). Judge Danser further reserves the right to amend his answer and respond to each allegation set forth in Count One of the First Amended Notice of Formal Proceedings following the conclusion of the criminal proceedings against Judge Danser.

### **COUNT TWO**

Regarding the allegations set forth in Count Two of the First Amendment Notice of Formal Proceedings, Judge Danser hereby invokes his Fifth Amendment privilege against self-incrimination guaranteed by the United States Constitution as to all allegations. Judge Danser is informed and believes that otherwise admitting or denying the allegations set forth in Count Two, pursuant to Commission Rule 119(c), will cause irreparable injury to Judge Danser in his criminal case, as the District Attorney would utilize the admissions/denials as evidence against him therein. The Fifth Amendment privilege against self-incrimination applies to all proceedings, whether they be civil, criminal, administrative, judicial or investigatory. *Maness v. Meyers*, 419 U.S. 449, 464; 95 S.Ct. 584; 42 L.Ed. 2d 574 (1975); *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686, 688; 208 Cal. Rptr. 743 (1984). Judge Danser further reserves the right to amend his answer and respond to each allegation set forth in Count Two of the First

Amended Notice of Formal Proceedings following the conclusion of the criminal proceedings against Judge Danser.

### **COUNT THREE**

Regarding the allegations set forth in Count Three of the First Amendment Notice of Formal Proceedings, Judge Danser hereby invokes his Fifth Amendment privilege against self-incrimination guaranteed by the United States Constitution as to all allegations. Judge Danser is informed and believes that otherwise admitting or denying the allegations set forth in Count Three, pursuant to Commission Rule 119(c), will cause irreparable injury to Judge Danser in his criminal case, as the District Attorney would utilize the admissions/denials as evidence against him therein. The Fifth Amendment privilege against self-incrimination applies to all proceedings, whether they be civil, criminal, administrative, judicial or investigatory. *Maness v. Meyers*, 419 U.S. 449, 464; 95 S.Ct. 584; 42 L.Ed. 2d 574 (1975); *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686, 688; 208 Cal. Rptr. 743 (1984). Judge Danser further reserves the right to amend his answer and respond to each allegation set forth in Count Three of the First Amended Notice of Formal Proceedings following the conclusion of the criminal proceedings against Judge Danser.

### **COUNT FOUR**

Regarding the allegations set forth in Count Four of the First Amendment Notice of Formal Proceedings, Judge Danser hereby invokes his Fifth Amendment privilege against self-incrimination guaranteed by the United States Constitution as to all allegations. Judge Danser is informed and believes that otherwise admitting or denying the allegations set forth in Count Four, pursuant to Commission Rule 119(c), will cause irreparable

injury to Judge Danser in his criminal case, as the District Attorney would utilize the admissions/denials as evidence against him therein. The Fifth Amendment privilege against self-incrimination applies to all proceedings, whether they be civil, criminal, administrative, judicial or investigatory. *Maness v. Meyers*, 419 U.S. 449, 464; 95 S.Ct. 584; 42 L.Ed. 2d 574 (1975); *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686, 688; 208 Cal. Rptr. 743 (1984). Judge Danser further reserves the right to amend his answer and respond to each allegation set forth in Count Four of the First Amended Notice of Formal Proceedings following the conclusion of the criminal proceedings against Judge Danser.

#### COUNT FIVE

Regarding the allegations set forth in Count Five of the First Amendment Notice of Formal Proceedings, Judge Danser hereby invokes his Fifth Amendment privilege against self-incrimination guaranteed by the United States Constitution as to all allegations. Judge Danser is informed and believes that otherwise admitting or denying the allegations set forth in Count Five, pursuant to Commission Rule 119(c), will cause irreparable injury to Judge Danser in his criminal case, as the District Attorney would utilize the admissions/denials as evidence against him therein. The Fifth Amendment privilege against self-incrimination applies to all proceedings, whether they be civil, criminal, administrative, judicial or investigatory. *Maness v. Meyers*, 419 U.S. 449, 464; 95 S.Ct. 584; 42 L.Ed. 2d 574 (1975); *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686, 688; 208 Cal. Rptr. 743 (1984). Judge Danser further reserves the right to amend his answer and respond to each allegation set forth in Count Five of the First

Amended Notice of Formal Proceedings following the conclusion of the criminal proceedings against Judge Danser.

#### **COUNT SIX**

Regarding the allegations set forth in Count Six of the First Amendment Notice of Formal Proceedings, Judge Danser hereby invokes his Fifth Amendment privilege against self-incrimination guaranteed by the United States Constitution as to all allegations. Judge Danser is informed and believes that otherwise admitting or denying the allegations set forth in Count Six, pursuant to Commission Rule 119(c), will cause irreparable injury to Judge Danser in his criminal case, as the District Attorney would utilize the admissions/denials as evidence against him therein. The Fifth Amendment privilege against self-incrimination applies to all proceedings, whether they be civil, criminal, administrative, judicial or investigatory. *Maness v. Meyers*, 419 U.S. 449, 464; 95 S.Ct. 584; 42 L.Ed. 2d 574 (1975); *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686, 688; 208 Cal. Rptr. 743 (1984). Judge Danser further reserves the right to amend his answer and respond to each allegation set forth in Count Six of the First Amended Notice of Formal Proceedings following the conclusion of the criminal proceedings against Judge Danser.

#### **COUNT SEVEN**

Regarding the allegations set forth in Count Seven of the First Amendment Notice of Formal Proceedings, Judge Danser hereby invokes his Fifth Amendment privilege against self-incrimination guaranteed by the United States Constitution as to all allegations. Judge Danser is informed and believes that otherwise admitting or denying the allegations set forth in Count Seven, pursuant to Commission Rule 119(c), will cause irreparable



injury to Judge Danser in his criminal case, as the District Attorney would utilize the admissions/denials as evidence against him therein. The Fifth Amendment privilege against self-incrimination applies to all proceedings, whether they be civil, criminal, administrative, judicial or investigatory. *Maness v. Meyers*, 419 U.S. 449, 464; 95 S.Ct. 584; 42 L.Ed. 2d 574 (1975); *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686, 688; 208 Cal. Rptr. 743 (1984). Judge Danser further reserves the right to amend his answer and respond to each allegation set forth in Count Seven of the First Amended Notice of Formal Proceedings following the conclusion of the criminal proceedings against Judge Danser.

#### **COUNT EIGHT**

Regarding the allegations set forth in Count Eight of the First Amendment Notice of Formal Proceedings, Judge Danser hereby invokes his Fifth Amendment privilege against self-incrimination guaranteed by the United States Constitution as to all allegations. Judge Danser is informed and believes that otherwise admitting or denying the allegations set forth in Count Eight, pursuant to Commission Rule 119(c), will cause irreparable injury to Judge Danser in his criminal case, as the District Attorney would utilize the admissions/denials as evidence against him therein. The Fifth Amendment privilege against self-incrimination applies to all proceedings, whether they be civil, criminal, administrative, judicial or investigatory. *Maness v. Meyers*, 419 U.S. 449, 464; 95 S.Ct. 584; 42 L.Ed. 2d 574 (1975); *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686, 688; 208 Cal. Rptr. 743 (1984). Judge Danser further reserves the right to amend his answer and respond to each allegation set forth in Count Eight of the First

Amended Notice of Formal Proceedings following the conclusion of the criminal proceedings against Judge Danser.

**COUNT NINE**

Regarding the allegations set forth in Count Nine of the First Amendment Notice of Formal Proceedings, Judge Danser hereby invokes his Fifth Amendment privilege against self-incrimination guaranteed by the United States Constitution as to all allegations. Judge Danser is informed and believes that otherwise admitting or denying the allegations set forth in Count Nine, pursuant to Commission Rule 119(c), will cause irreparable injury to Judge Danser in his criminal case, as the District Attorney would utilize the admissions/denials as evidence against him therein. The Fifth Amendment privilege against self-incrimination applies to all proceedings, whether they be civil, criminal, administrative, judicial or investigatory. *Maness v. Meyers*, 419 U.S. 449, 464; 95 S.Ct. 584; 42 L.Ed. 2d 574 (1975); *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686, 688; 208 Cal. Rptr. 743 (1984). Judge Danser further reserves the right to amend his answer and respond to each allegation set forth in Count Nine of the First Amended Notice of Formal Proceedings following the conclusion of the criminal proceedings against Judge Danser.

Dated: March 4, 2004

MURPHY, PEARSON, BRADLEY &  
FEENEY

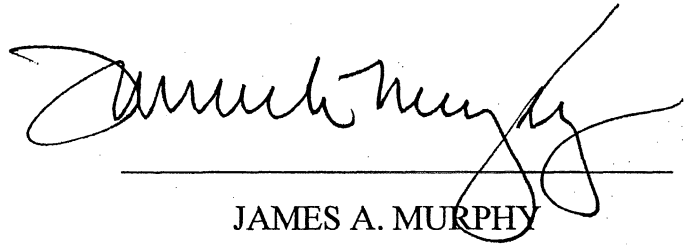
By 

JAMES A. MURPHY  
Attorneys for THE HONORABLE  
WILLIAM R. DANSER

## VERIFICATION

I, JAMES A. MURPHY, declare that I am the attorney for Responding Judge in the instant inquiry. That I have read the foregoing ANSWER TO NOTICE OF AMENDED FORMAL PROCEEDINGS, and know the contents thereof. That I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: 3/05/04

  
\_\_\_\_\_  
JAMES A. MURPHY

## CERTIFICATE OF SERVICE

I, Debbie A. Smith, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10<sup>th</sup> Floor, San Francisco, California 94108-5530.

On March 5, 2004, I served the following document on the parties in the within action:

**ANSWER OF JUDGE DAVID W. WASILENKO  
TO AMENDED NOTICE OF FORMAL PROCEEDINGS**

**BY HAND:** The above-described document will be placed in a sealed envelope which will be hand-delivered on this same date by SPINCYCLE LEGAL SERVICES, addressed as follows:

Jack Coyle  
Commission on Judicial Performance  
455 Golden Gate Avenue, Suite 14400  
San Francisco, CA 94102-3660

Richard G. R. Schickele  
Commission on Judicial Performance  
455 Golden Gate Avenue, Suite 14400  
San Francisco, CA 94102-3660

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on March 5, 2004.

By  \_\_\_\_\_  
Debbie A. Smith